

## BILL ANALYSIS

Senate Research Center

H.B. 2732  
By: Brimer (Harris)  
State Affairs  
6-27-95  
Enrolled

### BACKGROUND

There is no clear language regarding what constitutes the timely submission of an application for renewal of permits issued by the Alcoholic Beverage Code. Clarifying the language may allow permittees to keep up their record retention using electronic technology.

### PURPOSE

As enrolled, H.B. 2732 sets forth conditions under which an application for the renewal of an alcoholic beverage permit is considered timely; authorizes the holder of an agent's permit to deliver liquor to authorized permittees; authorizes alcoholic beverage records to be stored electronically; provides that any person selling alcoholic beverages in another state or country who ships alcoholic beverages directly to any Texas resident is in violation of this code; and establishes the liquor industry fair dealing law.

### RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 11.32, Alcoholic Beverage Code, to provide that the renewal of any alcoholic beverage permit is timely made if the application is mailed to and received by the Alcoholic Beverage Commission (commission) by the 10th day after the date on which it was due.

SECTION 2. Amends Section 35.01, Alcoholic Beverage Code, to authorize the holder of an alcoholic beverage agent's permit to deliver liquor to authorized permittees, among other actions.

SECTION 3. Amends Section 206.01(a), Alcoholic Beverage Code, to authorize alcoholic beverage records to be stored electronically.

SECTION 4. Amends Section 107.07, Alcoholic Beverage Code, by adding Subsection (f), to provide that any person in the business of selling alcoholic beverages in another state or country who ships any alcoholic beverage directly to any Texas resident is in violation of this code.

SECTION 5. Amends Section 16.01(a), Alcoholic Beverage Code, to authorize the holder of a winery permit to sell, by the drink, wine manufactured and bottled on the winery premises if the premises is in an area where the sale of wine is legal, among other actions.

SECTION 6. Amends Section 25.01, Alcoholic Beverage Code, to include madeira and sake in the list of beverages the holder of a wine and beer retailer's permit may sell for consumption on the premises.

SECTION 7. Amends Sections 251.14(b)-(e), Alcoholic Beverage Code, to include in the list of ballot issues in areas where alcoholic beverages are prohibited and the issue submitted pertains to the legalization of the sale of the prohibited types or classification, "The legal sale of wine on the premises of a holder of a winery permit for off-premises consumption only." Makes conforming changes.

SECTION 8. Amends Chapter 102C, Alcoholic Beverage Code, by adding Section 102.55, as follows:

Sec. 102.55. APPLICATION OF TERRITORIAL LIMITS TO LOCAL DISTRIBUTOR'S PERMITTEES. (a) Prohibits a local distributor's permittee who has purchased beer, ale, or malt liquor from the holder of a general, local, or branch distributor's license or from the holder of a general class B wholesaler's or local class B wholesaler's permit from delivering the product purchased from such distributor or wholesaler to any mixed beverage or private club permittee whose premises is located outside of the territory assigned to such distributor or wholesaler under a territorial limit agreement.

(b) Authorizes a local distributor's permittee to only purchase beer, ale, or malt liquor from a distributor or wholesaler who has been assigned the territory in which the premises of the permit is located.

(c) Requires a local distributor's permittee who delivers beer, ale, or malt liquor to a mixed beverage or private club permittee which is located outside of the territory in which the distributor's permit is located to purchase that alcohol from the distributor or wholesaler who has been assigned to the territory in which the mixed beverage or private club permittee is located.

SECTION 9. Amends Chapter 102, Alcoholic Beverage Code, by adding Subchapter E, as follows:

#### SUBCHAPTER E. LIQUOR INDUSTRY FAIR DEALING LAW

Sec. 102.90. DEFINITIONS. Defines "this Act," "liquor," "supplier," "wholesaler," "territory" or "sales territory," and "brand" or "label."

Sec. 102.92. PURPOSES AND POLICIES. Sets forth the purposes and policies of this Act regarding the prevention of unfair business practices and to foster vigorous competition in the liquor industry.

Sec. 102.93. DESIGNATION OF SALES TERRITORIES AND EXCLUSIVE WHOLESALE DISTRIBUTORS. (a) Requires every supplier shipping liquor into the state to submit to the commission one label for each brand of liquor to be shipped and to designate the sales territories for each of its brands sold in this state and name one wholesaler who shall be the exclusive distributor of the brand within the territory.

(b) Requires each supplier to enter into an agreement with one wholesaler in each territory, appointing that wholesaler the exclusive wholesaler of the brands to be sold in that territory. Requires every wholesaler who was handling a brand on May 1, 1995, to be designated by the supplier as the exclusive wholesaler for such brand in the sales territory.

(c) Requires every wholesaler to file with the commission a copy of each assignment by which the wholesaler was appointed by a supplier as the exclusive wholesaler of the brand within the territory.

(d) Requires the commission to approve such designations of wholesalers and territories to not be changed or initially disapproved by the commission.

(e) Requires any brand or label which is the same as or similar to a brand which has already been registered by a supplier to the wholesaler to be assigned to the wholesaler to which the original brand was assigned.

Sec. 102.94. UNLAWFUL TRANSACTIONS. (a) Prohibits any supplier from selling any brand or label of liquor other than to the wholesaler appointed as the exclusive wholesaler of that brand.

(b) Prohibits any wholesaler from selling any liquor to a retailer whose premises is not located within the wholesaler's territory unless the wholesaler has been appointed as the exclusive wholesaler of that brand for the territory in which the sale is made.

(c) Requires violation of this section to be grounds for cancellation or suspension of any permit held by the violator.

Sec. 102.95. REQUEST TO CHANGE DESIGNATIONS. (a) Requires any supplier desiring to change a wholesaler with respect to any brand or to alter the territory of an exclusive wholesaler to file with the commission a form containing certain information.

(b) Requires a copy of the request form to be sent to each wholesaler who may be affected by the proposed changes.

(c) Sets forth grounds that the commission may consider in determining good cause for authorizing a change in wholesalers or sales territories.

Sec. 102.96. PROTEST OF CHANGES IN DESIGNATIONS. Requires an exclusive wholesaler adversely affected by a contemplated change in designation to have the right to protest any proposed change by filing an objection with the commission within 90 days of receiving notice of the change. Requires the supplier to continue to supply the designated wholesaler such quantities of the brand as the wholesaler requires during the intervening time. Requires the supplier to continue to supply the designated wholesaler such quantities as the wholesaler requires until judgment or order of the court is final, if a petition for judicial review is filed.

Sec. 102.97. HEARING. (a) Requires the commission to set the matter for hearing within 60 days on receipt of a protest by an affected wholesaler or on its own motion. Requires the hearing to be conducted in Travis County as a contested case under the provisions of Chapter 2001, Government Code. Entitles any wholesaler aggrieved by a final decision or order to judicial review by filing a petition in certain courts. Authorizes the judgment of the district court to be appealed by any party as in other civil cases.

(b) Requires change of wholesaler to take effect 90 days from notification if no objection is filed. Requires the supplier to purchase from its former wholesaler all brands involved at laid-in cost and remove said inventory to the new wholesaler.

(c) Requires any manufacturer, shipper, or broker who obtains or acquires the right to sell, ship, or distribute any brand to stand in place of and be subject to all of the rights, privileges, duties, and obligations of its predecessor or its predecessors from which such brands were obtained or acquired.

Sec. 102.98. EFFECT. Prohibits the effect of this subchapter from being varied by contract. Provides that any agreement purporting to do so is void and unenforceable to the extent of such variance.

Sec. 102.99. PROHIBITED CONDUCT. Sets forth prohibited conduct for a supplier.

Sec. 102.991. TRANSFER OF BUSINESS ASSETS OR STOCK. (a) Prohibits any supplier from withholding or delaying its approval of any assignment, sale, or transfer of the stock of a wholesaler or a wholesaler's assets, voting stock, the stock of any parent corporation, or the beneficial ownership or control of any entity owning or controlling the wholesaler. Prohibits any supplier from denying the surviving partners of a partnership, on the death of one of the partners operating the business of a wholesaler, the right to become a successor in interest to the agreement between the supplier and the partnership.

(b) Prohibits any supplier from denying approval for any transfer of ownership to a surviving spouse or adult child of an owner of a wholesaler, provided that subsequent transfers be subject to the provisions of Subsection (a).

SECTION 10. Emergency clause.  
Effective date: upon passage.